



[2023] JMSC Civ.26

IN THE SUPREME COURT OF JUDICATURE OF JAMAICA

CIVIL DIVISION

CLAIM NO. 2010HCV03234

BETWEEN	LORANE FERGUSON	CLAIMANT
AND	REVENUE PROTECTION DEPARTMENT	1ST DEFENDANT
AND	ATTORNEY GENERAL OF JAMAICA	2ND DEFENDANT

IN OPEN COURT

Mr. Lancelot Clarke Jr., Mr. Patrick Peterkin and Ms. Phylcia Williams instructed by Lancelot Clarke & Co. for the Claimant

Mr. Matthew Gabbadon instructed by the Director of State Proceedings for the Defendants

Heard: December 19, 2022 and February 24, 2023

False imprisonment – Detinue – Section 33 of the Constabulary Force Act – Whether failure to plead that the officers acted maliciously or without reasonable and probable cause is fatal to the claim

CARR, J

Introduction

[1] The claimant, Lorane Ferguson, seeks an award in damages as a result of the wrongful detention of his motor vehicle and false imprisonment, which he alleges

was committed by the 1st defendant. The 2nd defendant is sued by virtue of the Crown Proceedings Act.

- [2] Mr. Ferguson avers that on or about February 2002 he purchased a black Toyota Tundra motor truck with chassis number 5TBRT3413YS003690. The vehicle was imported into the country and its constituent parts were assembled here. He licensed and insured the truck after paying the relevant customs duties.
- [3] Sometime in October 2009, the 1st Defendant, the Revenue Protection Division (RPD) unlawfully seized his vehicle and he was detained by the police for approximately four hours.

Issue

- [4] Whether the failure to plead that the defendants “acted maliciously or without reasonable and probable cause” is fatal to the claimant’s case.

Discussion

- [5] Mr. Ferguson in his claim form averred that the 1st defendant caused him to be detained by officers of the Jamaica Constabulary Force. At paragraph 7, under the heading “*The grounds of the claim are as follows*”, it states: “*That the 1st Defendant has acted in an oppressive, arbitrary and unconstitutional matter in relation to the detention, and continued detention of the Claimant’s motor vehicle, and in relation to the physical detention of the Claimant himself.*”
- [6] In his submissions, counsel Mr. Clarke, conceded that the claimant failed to plead that the police acted maliciously or without reasonable and probable cause in outlining the claim for false imprisonment. Based on the statutory provisions set out at **Section 33** of the **Constabulary Force Act (CFA)** the claimant must state, in the declaration, that he alleges that the act of the Constable was done maliciously or without reasonable or probable cause. The section is set out below:

“Every action to be brought against any Constable for any act done by him in the execution of his office, shall be an action on the case as for a tort; and in the declaration it shall be expressly alleged that such act was done either maliciously or without reasonable or probable cause - and if at the trial of any such action the plaintiff shall fail to prove such allegation he shall be non-suited or a verdict shall be given for the defendant.”

[7] Mr. Clarke could not provide a rebuttal to Mr. Gabbadon’s submission that this deficiency in the pleadings was fatal to the claim for damages for false imprisonment. It is my considered view that the section is clear in the use of the word “shall”, the pleading is therefore mandatory. I find that the claimant did not plead the particulars as set out in the **CFA**, in the claim form or the particulars of claim and, as a result, his claim for false imprisonment must fail.

[8] Although the point was never raised by Mr. Gabbadon in respect of the claim for detainee the principle also holds true. Under the **Customs Act (CA)** all officers carrying out their duties are given the powers, authorities and privileges given to officers of the Constabulary Force¹.

“For the purpose of carrying out the provisions of the customs laws all officers shall have the same powers, authorities and privileges as are given by law to officers of the Constabulary Force.”

[9] At Section 2 (1) an officer is defined as set out below;

““officer” includes any person employed in the Department of Customs and Excise, the Revenue Protection Division of the Ministry of Finance and all officers of the Constabulary Force, as well as any person acting in the aid of any officer or any such person; and any person acting in the aid of an officer acting in the execution of his office or duty shall be deemed to be an officer acting in the execution of his office or duty;”

¹ Section 3 of the Customs Act

- [10] In the circumstances the requirement for specific pleadings as set out under Section 33 of the **CFA** is also applicable to officers attached to the Customs Department. In this case there is no dispute that the officer who conducted the seizure was an employee of the RPD of the Ministry of Finance and that at the time she was lawfully executing her duties.
- [11] Neither the claim form nor the particulars of claim refer to the pleadings as set out in the **CFA** in respect of the agents of the RPD. The claimant, having not satisfied the requirements of the statute, cannot now seek to prove what was never pleaded. In the circumstances the claim in respect of detinue must also fail.
- [12] Having said this, I will nonetheless go on to discuss the elements of the tort of detinue, because on the evidence presented the claimant would still be unable to succeed on his claim.

Submissions on behalf of the claimant and the defendants

- [13] Counsel Mr. Gabbadon referred to the judgment of Nembhard, J in the case of **Rowena Johnson-Dennie v. Attorney General and Ors.**, which provided a concise definition of the tort of detinue. At paragraph 10 she stated:

“the action of detinue lay, at the suit of a claimant having a right to immediate possession, for the wrongful detention of his chattel by the defendant, evidenced by the defendant’s refusal to deliver it up on demand.”

- [14] In applying the dicta to this case, the claimant must establish the following;
- a) that he had a right to the immediate possession of the vehicle,
 - b) that he unconditionally and specifically demanded the return of the vehicle and,
 - c) that the defendant refused to comply after a reasonable time.

- [15] Mr. Gabbadon submitted that the elements of the tort had not been made out in this case. Firstly, he argued that the claimant did not have a right to immediate possession of the motor truck as it was a stolen vehicle. The vehicle was allegedly stolen in the United States in 2002 and the parts were imported to Jamaica and reassembled here.
- [16] Secondly, the demand which was made on behalf of the claimant was conditional upon the payment of a sum of \$708,000.00 that the claimant suggested represented loss of use.
- [17] Thirdly, the refusal to return the motor truck was for a legitimate and reasonable purpose. It was submitted that the motor truck was uncustomed goods as it was stolen and smuggled into Jamaica as parts and then reassembled. As a result, the motor truck is subject to penalties and forfeiture as per the **CA**. Counsel also submitted that the vehicle was subject to customs duties because of the way it was imported into the island.
- [18] Mr. Clarke submitted that there was no evidence to suggest that the claimant was in any way involved in the theft of any motor truck in the United States. In fact, he argued, that there was no evidence to substantiate a claim that the motor truck which was in the possession of the claimant had even been stolen.
- [19] Further, it was submitted, that the 1st defendant had contacted the claimant on several occasions in relation to the truck and nothing was done until the vehicle was seized several years later. Counsel suggested that the action of the 1st defendant was statute barred and that they had no reasonable or probable cause to seize the truck. In those circumstances the defendants were liable to the claimant and he should be awarded damages.

Analysis and discussion

Does the claimant have the right to immediate possession of the vehicle?

- [20] The evidence in support of the status of the motor truck came primarily from Ms. Fiona Pascoe. She is employed to the RPD as a revenue investigator. Ms. Pascoe's witness statement stood as her evidence in chief. In that statement she indicated that the claimant came to the offices of the RPD on June 4, 2007. He advised that he was having difficulty registering the motor truck. She said that the claimant admitted that he knew the vehicle had been reported stolen overseas.
- [21] She commenced investigations into the matter and confirmed the report of the claimant that the vehicle was reported stolen in the United States. It was also revealed that the vehicle was imported into the island in parts and this resulted in a shortfall in customs duties as well as breaches of the **CA**. In November of 2008 she received a case file from her superior with instructions to continue the investigations into the motor truck.
- [22] During an interview with the claimant, he told her that he had sold the vehicle to a police officer, and the officer was now in possession of it. He was asked to produce the vehicle for inspection. This was not done.
- [23] Based on her investigations and several failed attempts to have the claimant bring the vehicle to the RPD, Ms. Pascoe requested and obtained permission from her superiors to have the vehicle seized.
- [24] On October 7, 2009 she located the vehicle at a premises in Portmore and the vehicle was seized by her department with the assistance of police officers. The claimant was notified of the seizure. While in the possession of the RPD further checks were made of the documentation on the vehicle. It was discovered that the motor vehicle registration disc was attached to a motorcycle or scooter.
- [25] In a file note prepared by Ms. Pascoe which was tendered and admitted into evidence as a part of an agreed bundle of documents, she points out that the vehicle at the time of seizure was registered 0650 EB and that the owners were Mr. Courtney Wright and Mr. Lorane Ferguson and the vehicle was a motor truck not a motor bike or scooter.

[26] There is no dispute that the claimant was aware that the motor vehicle was reported stolen overseas. He does not deny this. It is also clear based on his interview with Ms. Pascoe on January 13, 2009 (Exhibit 35) that the claimant sold the vehicle to a friend, the police officer, who was in possession of the vehicle at the time of the seizure.

[27] Given those circumstances there are two issues of concern. The first is whether the vehicle is owned by the claimant solely or jointly with the person that it was registered to, that is, Mr. Courtney Wright. Secondly, whether the vehicle is owned by the claimant at all given the evidence that it was sold and transferred to the police officer who was in possession of the vehicle. It is noted that there is no statement from that officer as to his interest in the vehicle nor is there a statement from Mr. Wright as to his interest or assent to this claim. There is clearly therefore on the face of it inconsistent evidence of the true ownership of the vehicle. It is evident that the claimant knew of the challenges with the motor vehicle from as far back as 2003 when he attempted to have it licensed and registered and yet he conducted several transactions nonetheless. I am not of the view that he was entitled to immediate possession of the vehicle in these circumstances.

[28] The defendants further averred that the claimant had no right to immediate possession of the vehicle, because the vehicle was uncustomed goods and subject to seizure, as a result of the failure on the part of the claimant to pay the stated duties. The claimant denied the suggestions that he was aware of the penalties that were owing on the vehicle. However, in his letter to the Commissioner (Exhibit 19) he stated in the first paragraph:

“As per discussion on 06/10/2009 regarding the captioned vehicle I am writing to you for a reduction in outstanding duties and a waiver of penalty which was said to be outstanding on this vehicle.”

In the final paragraph:

“It is my belief that I fully cooperate with the investigator, also spend my money in travelling to USA to assist and at this time I am unable to pay any additional duties, as all my finances is depleted.”

[29] There can therefore be no doubt that as far back as 2009, the claimant was aware of the fact that the RPD intended to collect the outstanding duties and penalties.

[30] Counsel Mr. Clarke argued that the matter was statute barred due to the delay of the RPD. He submitted that the **CA** provides that an action to recover penalties must be commenced within seven years of the detection of the offence. It is noted that the section relied on by Mr. Clarke speaks to the prosecution of offences under the **CA**. In this case it is accepted by all parties that the claimant was never arrested or charged with any offence under the **CA**. There is no provision which has been identified by Counsel that speaks to a limitation period for the seizure of property which is uncustomed.

[31] Section 241 of the **CA** provides as follows:

“Proceedings. under the customs laws may be commenced at any time within seven years after the date of the offence.”

Uncustomed goods are defined in Section 2 (1) as including,

“goods liable to duty on which the full duties due have not been paid, and any goods, whether liable to duty or not, which are imported or exported or in any way dealt with contrary to the customs laws”

[32] There is no definition of the word proceedings and as such the rules of statutory interpretation would apply. The word ‘proceedings’ is defined in law, as an action taken in a court to settle a dispute. In this case no legal action was taken in court to settle the matter with the claimant. Instead the RPD seized the vehicle belonging to the claimant on the basis that it was uncustomed goods.

[33] The decision to seize the vehicle, it was argued, arose under Section 210 of the **CA**, which states;

(1) Every person who shall import or bring, or be concerned in importing or bringing into the Island any prohibited goods, or any goods the importation of which is restricted, whether the same be unloaded or not, or shall unload, or assist or be otherwise concerned in unloading any goods which are prohibited, or any goods which are restricted and imported contrary to such restriction, or shall knowingly harbour, keep or conceal, or knowingly permit or suffer, or cause or procure to be harboured, kept or concealed, any prohibited, restricted or uncustomed goods, or shall knowingly acquire possession of or be in any way knowingly concerned in carrying, removing, depositing, concealing, or in any manner dealing with any goods with intent to defraud Her Majesty of any duties due thereon, or to evade any prohibition or restriction of or applicable to such goods, or shall be in any way knowingly concerned in any fraudulent evasion or attempt at evasion of any import or export duties of customs, or of the laws and restrictions of the customs relating to the importation, unloading, warehousing, delivery, removal, loading and exportation of goods, shall for each such offence incur a penalty of not less than treble the import duties payable on the goods nor more than treble the value of the goods; and all goods in respect of which any such offence shall be committed shall be forfeited.”

[34] The section, although making reference to an offence merely prescribes a penalty and indicates that the goods shall be forfeited. There is no indication that the offence must be placed before a court. Once the offence has been committed the penalty is incurred and the goods shall be forfeited. It is accepted that the claimant was deliberately concealing the truck from the officers of the RPD. He was asked to produce the vehicle for inspection and he failed to do so. An offence was committed and the officers had the authority to seize the vehicle. The claimant was therefore not entitled to immediate possession of the said vehicle.

Did the claimant make a specific and unconditional demand for the vehicle?

[35] The authorities have confirmed that the claimant must make a demand for the return of the item in order to establish a claim for detinue. However, this demand

must be specific and unconditional. The letter of “demand” on which the claimant relies, was dated February 2, 2010. The relevant portion is extracted below;

“We are of the opinion that any action to seize this said vehicle and impose certain duties to be paid are illegal (see your copy letter to our client). We therefore request that you make the necessary arrangements to have this vehicle handed over to our client within seven (7) days from the date of this letter along with the sum of Seven Hundred and Eight Thousand Dollars (\$708,000.00) representing the 118 days of illegal seizure @\$6,000.00 per day loss of use. If we do not hear from you within the aforementioned period then the matter will be handed over to our Attorneys for immediate suit.”

- [36] Mr. Gabbadon has submitted that the letter does not outline an unconditional demand for the vehicle as the request for the payment of money for loss of use makes that delivery conditional upon the payment.
- [37] Counsel Mr. Clarke argued that there is no magic formula or words which need to be stated in the letter. The court must be clear that there was a demand.
- [38] I find that the letter does set out a demand. However, I agree with Mr. Gabbadon that the request was conditional upon the payment of money for loss of use and therefore did not classify as an unconditional request. The vehicle was to be handed over along with a sum of money. There was no provision in the letter outlining what would occur if the money did not accompany the vehicle. In the circumstances I find that this was not an unconditional demand.

Was the failure to comply with the request for a reasonable and legitimate purpose?

- [39] It is a well-settled principle of law that a defence to a claim of detinue is that the detention was for a reasonable and legitimate purpose. The accepted evidence is that the vehicle was uncustomed goods. There was also evidence that the vehicle was being concealed as it was not in the possession of the claimant. Given that the vehicle could not be insured or licenced its seizure was for a reasonable and legitimate purpose.

Disposition

[40] The claimant has not established a claim against the defendants for false imprisonment or detainee.

Order:

1. Judgment for the Defendants.
2. Costs to the Defendants to be agreed or taxed.